

April 27, 2004

Exemption No. 6632E
Regulatory Docket No. FAA-2001-8744

Mr. Kent Olsen
Vintage Aircraft Chief Pilot
Evergreen Air Venture Museum
3850 Three Mile Lane
McMinnville, OR 97128-9494

Dear Mr. Olsen:

This letter informs you that the Federal Aviation Administration (FAA) has recently re-examined its policy as it relates to vintage aircraft. Therefore, we are initiating an action to amend Evergreen Air Venture Museum's (Evergreen) current Exemption No 6632, as amended, to reflect those policy changes.

The exemption currently held by Evergreen from §§ 91.315, 91.319(a), 119.5(g), and 119.21(a) of Title 14, Code of Federal Regulations (14 CFR) permits Evergreen to operate, subject to certain conditions and limitations, its (1) Boeing B-17 aircraft, which holds a limited category airworthiness certificate; (2) North American T-28 Trojan (T-28) aircraft, which holds an experimental category airworthiness certificate; and (3) Grumman TBM-1C Avenger Torpedo Bomber (TBM-1C), which holds a limited category airworthiness certificate for the purpose of carrying passengers on local flights in return for donations.

The FAA finds that aviation history can be represented in static displays in the same way historic landmarks may be represented in a museum or via live demonstration. The FAA has found a public interest in having certain former military aircraft continue to fly to further or maintain U.S. aviation history. However, the FAA finds it must balance that interest with the FAA's primary duty to support the public interest in setting the appropriate aviation safety standards, especially for aircraft operations involving paying passengers.

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Therefore, the FAA recently re-examined the criteria it uses to determine whether or not to grant exemptions to the operators of vintage military aircraft to allow for the carriage of paying passengers. The policy applies to aircraft that have been issued a special airworthiness certificate, which are otherwise not eligible to be used for the carriage of persons or property for hire. The original intent stated by the FAA was to allow persons to experience flight in aircraft developed for combat services during WWII.

Specifically, the FAA evaluates whether (1) a flight in the same or similar aircraft can be performed in full compliance with FAA regulations; (2) there is an overriding public interest in having the aircraft continue to be flown and, therefore, a need to raise funds from a good source such as paying passengers; (3) measures can be taken to establish an appropriate level of safety for the flights involving paying passengers; and (4) FAA oversight of the operation would not drain scarce FAA inspector resources so as to compromise the public's interest in adequate FAA oversight of other aircraft operations.

The FAA must consider the public interest in preserving "flyable" U.S. aviation history through the use of passenger-paid rides against the public interest in ensuring an appropriate level of safety for those paying passengers. The FAA finds that the proper balance of these public interests will be met and an exemption issued only if the following conditions are met. The aircraft must:

- (1) Be a former U.S. military, World War II (WWII) or earlier vintage airplane;
- (2) Be piston-powered;
- (3) Either be designed as a crew-served airplane or multiple-seat airplane with more than one pilot seat, not altered in terms of seating configuration or capacity from its original design; or
- (4) Be a replica of the vintage that is so unique as to warrant further consideration; and
- (5) Have been manufactured on or before December 31, 1947.

Safety is the primary concern behind this decision to limit these exemptions to certain WWII vintage aircraft. WWII vintage aircraft are older, slower-moving aircraft. These features give the flightcrew time to take appropriate corrective actions in the event of an in-flight emergency and to avoid a serious incident. In contrast, jet aircraft move extremely fast, which reduces the margin of error in the event of an in-flight emergency. This circumstance increases the likelihood of the flightcrew and passengers suffering serious injuries or fatalities.

Furthermore, under FAA Order 8130.2E, Airworthiness Certification of Aircraft and Related Products, aircraft that are issued a special airworthiness certificate in the experimental category for the purpose of exhibition are listed in one of the four groups:

- (1) group I, performance competition aircraft;
- (2) group II, turbine-powered aircraft;
- (3) group III, piston-powered: historic military, vintage, replica, and unique aircraft; or
- (4) group IV, other aircraft.

Evergreen's T-28 is a group III aircraft and manufactured after December 13, 1947, thereby having no association with WWII action. Moreover, it does not meet the requirements as stipulated within the FAA policy. The FAA finds that the T-28 is not so unique as to warrant further consideration, since they were produced in significant volume for military service after December 13, 1947. Currently, there are at least 377 T-28's still being operated, including T-28's that hold standard category airworthiness certificates. In contrast, the exemption that was granted for the Spirit of St. Louis is appropriate, because that aircraft is the only replica conducting operations for compensation or hire known to the FAA. For the aforementioned reasons, the T-28 aircraft listed under this exemption will be removed from the list of aircraft allowed to operate under the provisions of the original grant of exemption after November 30, 2004.

We have determined that good cause exists for waiving the requirement for Federal Register publication because the amendment, if granted, would not set a precedent, and any delay in acting on this petition would be detrimental to Evergreen.

We also have determined that the justification for the issuance of the Exemption No. 6632, as amended, remains valid with respect to this exemption

In consideration of the foregoing, I find that a grant of extension is in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701, delegated to me by the Administrator, Exemption No. 6632, as amended, is hereby further amended by extending its August 31, 2004, termination date to November 30, 2004, unless sooner superseded or rescinded. Evergreen will not be able to operate the T-28 aircraft past November 30, 2004. However, Evergreen may request an extension of this exemption for the B-17 and TBM-1C aircraft.

All conditions and limitations of Exemption No. 6632, as amended, remain the same. This letter shall be attached to, and is a part of, Exemption No. 6632.

Sincerely,

/s/

John M. Allen
Acting Director, Flight Standards Service